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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2021–0010]

RIN 3245–AH67

Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Amount Calculation and Eligibility

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes related to loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) was enacted, extending the authority to make PPP loans through March 31, 2021, revising certain PPP requirements, and permitting second draw PPP loans. This interim final rule allows individuals who file an IRS Form 1040, Schedule C to calculate their maximum loan amount using gross income, removes the eligibility restriction that prevents businesses with owners who have non-financial fraud felony convictions in the last year from obtaining PPP loans, and removes the eligibility restriction that prevents businesses with owners who are delinquent or in default on their Federal student loans from obtaining PPP loans.

DATES:

Effective date: Unless otherwise specified in this interim final rule, the provisions of this interim final rule are effective March 4, 2021.

Applicability date: Unless otherwise specified, this interim final rule applies

to Paycheck Protection Programs loans approved after the effective date of this rule.

Comment date: Comments must be received on or before April 7, 2021.

ADDRESSES: You may submit comments, identified by number SBA–2021–0010 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) was enacted to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus disease 2019 (COVID–19) pandemic. Section 1102 of the CARES Act temporarily permitted the Small Business Administration (SBA) to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program,” pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (First Draw PPP Loans). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP).

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116–260) was enacted. The Economic Aid Act reauthorized lending under the PPP through March 31, 2021. The Economic Aid Act added

a new temporary section 7(a)(37) to the Small Business Act, which authorizes SBA to guarantee additional PPP loans (Second Draw PPP Loans) to eligible borrowers under generally the same terms and conditions available under section 7(a)(36) of the Small Business Act through March 31, 2021. The Economic Aid Act also redesignated section 1106 of the CARES Act as section 7A of the Small Business Act, to appear after section 7 of the Small Business Act.

SBA, in consultation with the Department of the Treasury (Treasury), initially published an interim final rule implementing the PPP on April 15, 2020 and subsequently issued additional interim final rules. On January 14, 2021, SBA published interim final rules implementing the Economic Aid Act amendments to the PPP.¹ On February 5, 2021, SBA published an additional interim final rule implementing Economic Aid Act changes related to the forgiveness and review of PPP loans.² As described below, this interim final rule revises the consolidated interim final rule implementing updates to the PPP, the interim final rule on second draw PPP loans, and the consolidated interim final rule on loan forgiveness requirements and loan review procedures, to allow individuals who file an IRS Form 1040, Schedule C to calculate their maximum loan amount using gross income. This interim final rule also revises the consolidated interim final rule implementing updates to the PPP to remove the eligibility restriction that prevents businesses with owners who have non-financial fraud felony convictions in the last year from obtaining PPP loans and remove the eligibility restriction that prevents businesses with owners who are delinquent or in default on their Federal student loans from obtaining PPP loans. The changes apply to both First Draw PPP Loans and Second Draw PPP Loans.

¹ 86 FR 3692 (Jan. 14, 2021) (which we refer to as the “consolidated interim final rule implementing updates to the PPP”); 86 FR 3712 (Jan. 14, 2021) (which we refer to as the “interim final rule on second draw PPP loans”).

² 86 FR 8283 (Feb. 5, 2021) (which we refer to as the “consolidated interim final rule on loan forgiveness requirements and loan review procedures”).

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 1114 of the CARES Act and section 303 of the Economic Aid Act authorize SBA to issue regulations to implement the Paycheck Protection Program without regard to notice requirements. In addition, this rule is being issued to allow for immediate implementation of these changes. The intent of both the CARES Act and the Economic Aid Act is that SBA provide relief to America's small businesses expeditiously. Given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021, SBA in consultation with Treasury has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will allow SBA to give small businesses affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

These comments must be submitted on or before April 7, 2021. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Revisions to Rules Implementing the Economic Aid Act

1. Gross Income

The statutory definition of “payroll costs” applicable to sole proprietors and independent contractors refers to “a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred.”³ Previously, PPP rules defined payroll costs for individuals who file an IRS Form 1040, Schedule C as payroll costs (if employees exist) plus net profits, which is net earnings from self-employment. SBA is aware of significant concerns

with this definition, because it does not take into account fixed and other business expenses that a small business must cover to stay in operation and therefore keep the owner employed. Thus, the support for employment for sole proprietors includes covering business expenses as well as net profits. This change would affect many sole proprietors who have been effectively excluded from the PPP, especially those with very little or negative net profit, many of which are located in underserved communities. Businesses that file Schedule C have higher concentrations of ownership by members of underserved groups. An analysis by the SBA Office of Advocacy of Census data found that firms with no employees are 70 percent owned by women and minorities, compared to 40 percent for businesses with employees.⁴ SBA has determined that changing the calculation for sole proprietors, independent contractors, and self-employed individuals will reduce barriers to accessing the PPP and expand funding among the smallest businesses.

Based on the statutory language of the CARES Act, SBA, in consultation with Treasury, has determined that SBA has discretion to establish an alternative calculation methodology for payroll costs for sole proprietors and independent contractors. For these borrowers, the statutory definition of “payroll costs” includes both “income” as well as “net earnings from self-employment.” The inclusion of both these terms in the statutory language indicates that they may have different meanings. Therefore, the term “income” as used in the definition of payroll costs for sole proprietors and independent contractors may be construed broadly to encompass a borrower's net income and a borrower's gross income.

Defining “income” to include gross income is consistent with Congress's intent that the PPP provide broad relief to small businesses and keep individuals employed, and that the PPP prioritize loans to, among others, small business concerns and entities in underserved markets, and small business concerns owned and controlled by socially and economically disadvantaged individuals and women.⁵ As described above, under the prior rules, many of these borrowers may not have received meaningful amounts from the PPP to support their own employment due to having small net

profits. Allowing a borrower to receive a loan amount based on their gross business income will provide the borrower a loan amount that is sufficient to meet the borrower's fixed expenses that are necessary to stay in business and keep the owner employed. SBA is implementing this change with respect to PPP loans that are approved after the effective date of this rule. A borrower whose PPP loan has already been approved as of the effective date of this rule cannot increase its PPP loan amount based on the new calculation methodology.

Therefore, SBA, in consultation with Treasury, has determined that a Schedule C filer may elect to calculate the owner compensation share of its payroll costs—that is, the share of its payroll costs that represents compensation of the owner—based on either (i) net profit or (ii) gross income, as calculated under the rule below.⁶ Gross income is the amount the borrower reports on line 7 of Schedule C. If a Schedule C filer has no employees, the borrower may elect simply to calculate its loan amount based on either net profit or gross income. If a Schedule C filer has employees, the borrower may elect to calculate the owner compensation share of its payroll costs based on either (i) net profit or (ii) gross income minus expenses reported on lines 14 (employee benefit programs), 19 (pension and profit-sharing plans), and 26 (wages (less employment credits)) of IRS Form 1040, Schedule C. Expenses reported on lines 14, 19, and 26 of the IRS Form 1040, Schedule C represent employee payroll costs and are subtracted from the owner compensation share of payroll costs if the owner uses gross income to calculate its loan amount in order to avoid double-counting these costs.⁷ In the context of determining a borrower's eligible expenses and forgiveness amount, this interim final rule refers to the owner compensation share of a Schedule C filer's loan amount as “proprietor expenses.” Proprietor expenses encompass an owner's business expenses and own compensation but do not include employee payroll costs. This proprietor expenses calculation limits a Schedule

⁶ For a Schedule C filer without employees, owner compensation is the only component of the borrower's payroll costs. For a Schedule C filer with employees, owner compensation is added to employee payroll costs to determine the borrower's total payroll costs.

⁷ This is consistent with the approach for calculating payroll costs for farmers and ranchers in subsection B.4.d. of the consolidated interim final rule implementing updates to the PPP.

⁴ See *A Look at Nonemployer Businesses*, SBA Office of Advocacy, August, 2018, *A Look at Nonemployer Businesses* ([sba.gov](https://www.sba.gov)).

⁵ See 15 U.S.C. 636(a)(36)(P)(iv).

³ 15 U.S.C. 636(a)(36)(A)(viii)(I)(bb).

C filer that included employee payroll costs in determining the PPP loan amount as owner compensation. This promotes Congress's goal of keeping workers paid and employed. However, the use of gross income by Schedule C filers may, in some cases, increase the risk of waste, fraud, or abuse, because it will substantially increase the maximum loan amount for relevant applicants, and in some cases an applicant's gross income may not accurately reflect the extent to which a PPP loan is necessary to support the ongoing operations of the applicant's business. To mitigate this risk, if a Schedule C filer elects to use gross income to calculate its loan amount on a First Draw PPP Loan and the borrower reported more than \$150,000 in gross income on the Schedule C that was used to calculate the borrower's loan amount, the borrower will not automatically be deemed to have made the statutorily required certification concerning the necessity of the loan request in good faith, and the borrower may be subject to a review by SBA of its certification.⁸ The safe harbor that SBA previously provided for borrowers that, together with their affiliates, receive PPP Loans with an original principal amount of less than \$2 million, will not apply to Schedule C filers that elect to use gross income to calculate their loan amount on a First Draw PPP Loan if they report more than \$150,000 in gross income on the Schedule C that was used to calculate the borrower's loan amount. SBA is eliminating the loan necessity safe harbor for these borrowers as they may be more likely to have other available sources of liquidity to support their business's operations than Schedule C filers with lower levels of gross income. SBA will review a sample of the population of First Draw PPP Loans made to Schedule C filers using the gross income calculation if the gross income on the Schedule C used to calculate the borrower's loan amount exceeds the threshold of \$150,000.⁹ If the borrower exceeds this threshold, then SBA will, for the sample drawn, assess whether these borrowers complied with the PPP eligibility criteria, including the good faith loan necessity certification. This will serve as

an additional deterrent to fraud, waste, and abuse because higher income borrowers that elect to use gross income rather than net profit to calculate their loan amount will face the prospect of a heightened review, which would include a review of their good faith loan necessity certification. The \$150,000 gross income threshold is necessary in light of the potentially large volume of applications SBA will receive from First Draw PPP Loan applicants that are eligible to use the gross income calculation. Maintaining the safe harbor for borrowers under this threshold is also necessary in light of the deterrent effect of auditing risk for many underresourced borrowers whose fixed cost of bookkeeping is higher in proportion to their income. This approach will enable SBA to conserve its finite audit resources and focus its reviews of First Draw PPP Loans using the new calculation on larger loans, where the compliance effort may yield higher returns. The reviews of loans to Schedule C filers that used the gross income calculation will follow the same processes that apply to PPP loans generally, except as specified above.¹⁰

Therefore, the following changes are made to PPP rules:

a. Subsection B.4.b of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3700) is revised to read as follows:

*b. I have income from self-employment and file an IRS Form 1040, Schedule C. How do I calculate the maximum amount I can borrow, and what documentation is required?*⁵³

How you calculate your maximum loan amount depends upon whether you employ other individuals. If you have no employees, use the following methodology to calculate your maximum loan amount:

i. Step 1: From your 2019 or 2020 IRS Form 1040, Schedule C, you may elect to use either your line 31 net profit amount or your line 7 gross income amount. (If you are using 2020 to calculate payroll costs and have not yet filed a 2020 return, fill it out and compute the value.) If this amount is over \$100,000, reduce it to \$100,000. If both your net profit and gross income are zero or less, you are not eligible for a PPP loan.

ii. Step 2: Calculate the average monthly net profit or gross income

amount (divide the amount from Step 1 by 12).

iii. Step 3: Multiply the average monthly net profit or gross income amount from Step 2 by 2.5. This amount cannot exceed \$20,833.

iv. Step 4: Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

You must provide the 2019 or 2020 (whichever you used to calculate your loan amount) IRS Form 1040, Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount and a 2019 or 2020 (whichever you used to calculate your loan amount) IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed. If using 2020 to calculate your loan amount, this is required regardless of whether you have filed a 2020 tax return with the IRS. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

If you have employees, use the following methodology to calculate your maximum loan amount:

i. Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:

a. At your election, either (1) the net profit amount from line 31 of your 2019 or 2020 IRS Form 1040, Schedule C, or (2) your 2019 or 2020 gross income minus employee payroll costs, calculated as your gross income reported on IRS Form 1040, Schedule C, line 7, minus your employee payroll costs reported on lines 14, 19, and 26 of IRS Form 1040, Schedule C (for either option, if you are using 2020 amounts and have not yet filed a 2020 return, fill it out and compute the value), up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred (if this amount is over \$100,000, reduce it to \$100,000, or if this amount is less than zero, set this amount at zero);

b. 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States, computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages & tips (line 5c, Column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips; subtract

⁸ SBA is not applying this safe harbor exclusion to Second Draw PPP Loans, because those applicants are required to certify that they have realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period.

⁹ SBA has developed a new borrower application form, SBA Form 2483-C, for First Draw PPP Loan borrowers that elect to use the new gross income calculation. Borrowers will be required to disclose their total amount of gross income on the form.

¹⁰ See part V. of the consolidated interim final rule on loan forgiveness requirements and loan review procedures.

⁵³ This subsection was originally published at 85 FR 21747, subsection III.1.b. (April 20, 2020) and has been modified to conform to additional rules or guidance and the Economic Aid Act.

any amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, and any amounts paid to any employee whose principal place of residence is outside the United States; and

c. 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040, Schedule C line 14 attributable to those contributions); retirement contributions (IRS Form 1040, Schedule C, line 19); and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).

ii. Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).

iii. Step 3: Multiply the average monthly amount from Step 2 by 2.5.

iv. Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

You must supply your 2019 or 2020 (whichever you used to calculate your loan amount) IRS Form 1040, Schedule C; Form 941 (or other tax forms or equivalent payroll processor records containing similar information); and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate your loan amount) or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

b. Subsection B.11.b of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3704) is revised to read as follows (footnotes are not restated):

*b. How can PPP loans be used by individuals with income from self-employment who file an IRS Form 1040, Schedule C?*⁸⁰

The proceeds of a PPP loan are to be used for the following:

i. For borrowers that use net profit to calculate loan amount, owner

compensation replacement, calculated based on 2019 or 2020 (using the same year that was used to calculate the loan amount) net profit as described in subsection B.4.b. For borrowers that use gross income to calculate loan amount, proprietor expenses (business expenses plus owner compensation), calculated based on 2019 or 2020 (using the same year that was used to calculate the loan amount) gross income as described in subsection B.4.b (this amount cannot exceed \$20,833). For borrowers who used gross income to calculate the loan amount and have no employees, proprietor expenses equal gross income. For borrowers who used gross income to calculate the loan amount and have employees, proprietor expenses equal the difference between gross income and employee payroll costs.

ii. Employee payroll costs (as defined in subsection B.4.g. of the consolidated interim final rule implementing updates to the PPP) for employees whose principal place of residence is in the United States, if you have employees.

iii. Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), business rent payments (e.g., the warehouse where you store business equipment or the vehicle you use to perform your business), and business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). You must have claimed or be entitled to claim a deduction for such expenses on your 2019 or 2020 (whichever you used to calculate loan amount) IRS Form 1040, Schedule C for them to be a permissible use. For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 or 2020 IRS Form 1040, Schedule C, you cannot use the proceeds for utilities.

iv. Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).

v. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 (maturity will be reset to PPP's maturity of two years for PPP loans made before June 5, 2020 unless the borrower and lender mutually agree to extend the maturity of such loans to five years, or PPP's maturity of five

years for PPP loans made on or after June 5).⁸¹

vi. Covered operations expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on IRS Form 1040, Schedule C.

vii. Covered property damage costs, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on IRS Form 1040, Schedule C.

viii. Covered supplier costs, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on IRS Form 1040, Schedule C.

ix. Covered worker protection expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on Form IRS 1040, Schedule C.⁸²

c. Subsection B.13 of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3706) is revised to read as follows:

*13. Limited safe harbor with respect to certification concerning need for PPP loan request.*⁸⁷

The CARES Act requires each applicant applying for a PPP loan to certify in good faith “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing obligations” of the applicant. SBA, in consultation with Treasury, issued additional guidance concerning how SBA will review the required good-faith certification. *See* FAQ 46 (as originally posted May 13, 2020). This guidance included a safe harbor providing that any PPP borrower, together with its affiliates, that received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith. In light of the additional flexibility being provided to certain borrowers to use their gross income amount, as reported on line 7 of IRS Form 1040, Schedule C, borrowers that elect to use gross income to calculate their maximum loan amount

⁸¹ Under section 7(a)(36)(Q) of the Small Business Act, as amended by section 341 of the Economic Aid Act, an EIDL loan used for purposes other than paying payroll costs and other eligible PPP expenditures is not considered a duplication of the assistance available under the PPP.

⁸² Items vi. through ix. were added to conform to section 304 of the Economic Aid Act. These provisions are effective as if included in the CARES Act and apply to any loan made before, on, or after December 27, 2020, including forgiveness of such loan, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan.

⁸⁷ This subsection has been added to codify the safe harbor contained in FAQ 46 (posted May 13, 2020).

⁸⁰ This subsection was originally published at 85 FR 21747, subsection III.1.d. (April 20, 2020) and has been modified to conform to the Economic Aid Act.

for a First Draw PPP Loan and that report more than \$150,000 in gross income on the Schedule C that was used to calculate the borrower's loan amount will not automatically be deemed to have made the required certification concerning the necessity of the loan request in good faith. SBA may review their certification that "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." If SBA determines that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA may determine that the borrower was not eligible for the loan, for the loan amount, or for loan forgiveness.

d. Subsection (f)(7) of the interim final rule for Second Draw PPP Loans (86 FR 3712, 3720) is revised to read as follows:

(7) The maximum amount of a Second Draw PPP Loan to a borrower that has income from self-employment and files an IRS Form 1040, Schedule C, is calculated as follows, depending on whether the borrower has employees:

(i) For a borrower that has income from self-employment and does not have any employees, the maximum loan amount is the lesser of:

(A) The product obtained by multiplying:

(1) The net profit or gross income of the borrower in 2019 or 2020, as reported on IRS Form 1040, Schedule C, that is not more than \$100,000, divided by 12; and

(2) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 as defined in subsection (f)(10) at the time of disbursement, 3.5). This amount cannot exceed \$29,167 for NAICS code 72 borrowers and \$20,833 for all other borrowers.

(ii) For a borrower that has income from self-employment and has employees, the maximum loan amount is the lesser of:

(A) The product obtained by multiplying:

(1) The sum of (i) one of the two following options, up to \$100,000; if this amount is less than zero, set this amount at zero (if you are using 2020 and have not yet filed a 2020 return, fill it out and compute the value):

- The borrower's net profit reported on IRS Form 1040, Schedule C for 2019 or 2020, divided by 12; or

- line 7 from the borrower's 2019 or 2020 IRS Form 1040, Schedule C, minus lines 14, 19, and 26, divided by 12; and

(ii) the average total monthly payment for employee payroll costs incurred or paid by the borrower during the same year elected by the borrower; by

(2) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 at the time of disbursement as defined in subsection (f)(10), 3.5); or (B) \$2,000,000.

e. Subsection IV.1.b.ii of the interim final rule on loan forgiveness requirements and loan review procedures (86 FR 8283, 8287) is revised to read as follows:

ii. Owner compensation replacement, calculated based on 2019 or 2020¹⁹ net profit or proprietor expenses, if applicable,²⁰ as described in subsection 3.c. below; forgiveness of such amounts is limited to either (a) the prorated portion of 2019 or 2020 net profit or gross income, if applicable, for a covered period up to 2.5 months, or (b) 2.5 months' worth (2.5/12) of 2019 or 2020 net profit or gross income, if applicable, (up to \$20,833) for a covered period greater than 2.5 months,²¹ excluding any qualified sick leave equivalent amount for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;

f. Subsection IV.3.c of the interim final rule on loan forgiveness requirements and loan review procedures (86 FR 8283, 8289) is revised to read as follows:

*c. Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?*³⁷

¹⁹ For First Draw PPP loans made in 2020, borrowers use 2019. For First Draw PPP loans made in 2021 and Second Draw PPP Loans, borrowers use the year (2019 or 2020) that was used to calculate the borrower's loan amount.

²⁰ For self-employed borrowers with no employees that file IRS Form 1040, Schedule C, who used gross income to calculate the loan amount, proprietor expenses equal gross income. For self-employed borrowers with employees that file IRS Form 1040, Schedule C, who used gross income to calculate the loan amount, proprietor expenses equal the difference between gross income and employee payroll costs. See subsections B.4.b and B.11.b of the consolidated interim final rule implementing updates to the PPP as amended by this interim final rule. For self-employed borrowers that file IRS Form 1040, Schedule F and have no employees, gross income may be used instead of net profit throughout this calculation. For self-employed borrowers that file IRS Form 1040, Schedule F and have employees, the difference between gross income and employee payroll costs may be used instead of net profit throughout this calculation. See section 313 of the Economic Aid Act. This calculation for Schedule F filers is equivalent to proprietor expenses for Schedule C filers.

²¹ Section 306 of the Economic Aid Act allows the borrower to select a covered period between 8 weeks and 24 weeks.

³⁷ This subsection was originally published at 85 FR 33004, subsection III.3.c. (June 1, 2020) and

Yes. Forgiveness is capped at 2.5 months' worth (2.5/12) of an owner-employee or self-employed individual's 2019 or 2020³⁸ compensation (up to a maximum \$20,833 per individual in total across all businesses). The individual's total compensation may not exceed \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred. For example, for borrowers that elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 or 2020 compensation (*i.e.*, approximately 15.38 percent of 2019 or 2020 compensation) or \$15,385 per individual, whichever is less, in total across all businesses. For borrowers that elect to use a ten-week covered period, the cap is ten weeks' worth (10/52) of 2019 or 2020 compensation (approximately 19.23 percent) or \$19,231 per individual, whichever is less, in total across all businesses. For a covered period longer than 2.5 months, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 or 2020 compensation (up to \$20,833) in total across all businesses.

In particular, C-corporation owner-employees are capped by the prorated amount of their 2019 or 2020³⁹ employee cash compensation and employer retirement and health, life, disability, vision and dental insurance contributions made on their behalf. S-corporation owner-employees are capped by the prorated amount of their 2019 or 2020⁴⁰ employee cash compensation and employer retirement contributions made on their behalf. However, employer health, life, disability, vision and dental insurance contributions made on their behalf cannot be separately added; those payments are already included in their employee cash compensation. Schedule C or F filers are capped by the prorated amount of their owner compensation replacement (calculated based on 2019

amended by 85 FR 38304, subsection III.1.d (June 26, 2020) and has been modified to conform to sections 308 and 344 of the Economic Aid Act and for readability.

³⁸ For First Draw PPP loans made in 2020, borrowers use 2019. For First Draw PPP loans made in 2021 and Second Draw PPP loans, borrowers use the year (2019 or 2020) that was used to calculate the borrower's loan amount.

³⁹ Use whichever year was used to calculate the borrower's loan amount.

⁴⁰ Use whichever year was used to calculate the borrower's loan amount.

or 2020 net profit) or proprietor expenses (calculated based on 2019 or 2020 gross income).⁴¹ General partners are capped by the prorated amount of their 2019 or 2020 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. For self-employed individuals, including Schedule C or F filers and general partners, retirement and health, life, disability, vision or dental insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation. LLC members are subject to the rules based on their LLC's tax filing status in the reference year used to determine their loan amount.

g. Subsection IV.6.b of the interim final rule on loan forgiveness requirements and loan review procedures (86 FR 8283, 8293) is revised to read as follows:

*b. What documentation are borrowers who are individuals with self-employment income who file an IRS Form 1040, Schedule C or F required to submit to their lender with their request for loan forgiveness?*⁶⁷

For borrowers that received loans of \$150,000 or less that use the SBA Form 3508S, the borrower must submit the certification and information required by section 7A(I)(1)(A) of the Small Business Act and, for a Second Draw PPP Loan, revenue reduction documentation if such documentation was not provided at the time of application.⁶⁸ All other borrowers must submit the certification required by section 7A(e)(3) of the Small Business Act, and (if the borrower has employees) IRS Form 941 and state quarterly

business and individual employee wage reporting and unemployment insurance tax forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and group health, life, disability, vision, and dental insurance contributions). Whether or not the borrower has employees, the borrower must submit evidence of business rent, business mortgage interest payments on real or personal property, business utility payments, or payments for a covered operations expenditure, covered property damage cost, covered supplier cost, or covered worker protection expenditure during the covered period if the borrower used loan proceeds for those purposes. This documentation may include cancelled checks, payment receipts, transcripts of accounts, purchase orders, orders, invoices, or other documents verifying payments on nonpayroll costs.

For all loans, the 2019 or 2020 IRS Form 1040, Schedule C or F that the borrower provided at the time of the PPP loan application must be used to determine the amount of net profit or proprietor expenses allocated to the owner for the covered period.⁶⁹

h. SBA has developed new Borrower Application Forms for use by borrowers that are Schedule C filers and elect to calculate their loan amount using gross income, as allowed under this interim final rule. SBA Form 2483-C will be used by such borrowers when applying for First Draw PPP Loans and SBA Form 2483-SD-C will be used by such borrowers when applying for Second Draw PPP Loans. All references to the Borrower Application Form in the consolidated interim final rule implementing updates to the PPP, the interim final rule on second draw PPP loans, and the consolidated interim final rule on loan forgiveness requirements and loan review procedures include the SBA Form 2483-C and the SBA Form 2483-SD-C, as applicable.

2. Eligibility

The consolidated interim final rule implementing updates to the PPP provided, among other things, that a PPP loan applicant is ineligible if an owner of 20 percent or more of the equity of the applicant has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for (1) a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years, or (2) any other felony within the last year. This provision reflected the PPP eligibility requirements as revised in an interim final rule titled "Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to First Interim Final Rule," published on June 18, 2020 (85 FR 36717). SBA has further reviewed these eligibility restrictions and, in consultation with Treasury, has determined that modification to the consolidated interim final rule implementing updates to the PPP is appropriate to ensure consistency with Congressional intent to provide relief to small businesses and their employees, expand access to the PPP, and remove barriers people with prior convictions face when working to restart their lives and contribute to our economy. SBA has determined that the one-year lookback restriction related to non-financial fraud felonies should be removed and only the five-year lookback restriction for those felonies involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance will limit an applicant's eligibility for the PPP. Removing the one-year lookback restriction related to non-financial fraud felonies is consistent with Congressional support for reducing criminal background checks in the PPP¹¹ and the important policies underlying recent criminal justice reforms in Congress, such as last year's Fair Chance to Compete for Jobs Act of 2019 (Pub. L. 116–92, Div. A, Tit. XI, Subtit. B.) and the First Step Act of 2018 (Pub. L. 115–391).

In light of the unique, emergency nature of the PPP and the higher fraud risk that exists due to the PPP's emphasis on speed in loan approvals and disbursements, the remaining restrictions on eligibility related to an applicant or owner's criminal history

⁴¹ For self-employed borrowers with no employees that file IRS Form 1040, Schedule C, who used gross income to calculate the loan amount, proprietor expenses equal gross income. For self-employed borrowers with employees that file IRS Form 1040, Schedule C, who used gross income to calculate the loan amount, proprietor expenses equal the difference between gross income and employee payroll costs. See subsections B.4.b and B.11.b of the consolidated interim final rule implementing updates to the PPP as amended by this interim final rule. For self-employed borrowers that file IRS Form 1040, Schedule F and have no employees, gross income may be used instead of net profit. For self-employed borrowers that file IRS Form 1040, Schedule F and have employees, the difference between gross income and employee payroll costs may be used. See section 313 of the Economic Aid Act.

⁶⁷ This subsection was originally published at 85 FR 21747, subsection III.1.g. (Apr. 20, 2020) and has been modified to conform to sections 304, 307, 308, and 313 of the Economic Aid Act and for readability.

⁶⁸ See subsection (g)(2)(v) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

⁶⁹ For self-employed borrowers with no employees that file IRS Form 1040, Schedule C, who used gross income to calculate the loan amount, proprietor expenses equal gross income. For self-employed borrowers with employees that file IRS Form 1040, Schedule C, who used gross income to calculate the loan amount, proprietor expenses equal the difference between gross income and employee payroll costs. See subsections B.4.b and B.11.b of the consolidated interim final rule implementing updates to the PPP as amended by this interim final rule. For self-employed borrowers that file IRS Form 1040, Schedule F and have no employees, gross income may be used instead of net profit. For self-employed borrowers that file IRS Form 1040, Schedule F and have employees, the difference between gross income and employee payroll costs may be used instead of net profit.

¹¹ See Paycheck Protection Program Second Chance Act, S. 3865, 116th Congress (introduced in the Senate on June 2, 2020).

will help mitigate the risk of default, fraud, or misuse of PPP loan funds that are intended to benefit small business employees. By removing barriers for applicants with non-financial fraud felonies, this interim final rule balances the need to increase access to the PPP and remove barriers for people with prior convictions while still ensuring basic guardrails against fraud exist for this emergency program. Preserving the five-year lookback for financial fraud-related felonies is one of these guardrails.

The consolidated interim final rule implementing updates to the PPP also provided that a PPP loan applicant is ineligible for a PPP loan if the applicant, or any business owned or controlled by the applicant or any of its owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government. SBA, in consultation with Treasury, has decided to eliminate the restriction in the consolidated interim final rule to the extent it applies to Federal student loans.¹² SBA has determined that eliminating consideration of delinquent or defaulted Federal student loans is appropriate to ensure consistency with Congressional intent to provide relief to small businesses and their employees and expand access to the PPP. This change will make PPP loans available to more borrowers with financial need and is consistent with Congress's intent that PPP loans be prioritized for small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in section 8(d)(3)(c) of the Small Business Act.¹³ According to the Department of Education, "Black and Brown students rely more heavily on student loan debt than their peers and experience delinquency at disproportionately high rates. As a result prohibiting delinquent student loan borrowers from obtaining PPP loans is more likely to exclude business owners of color from access to

the loans they need."¹⁴ In addition, this change is consistent with the policy set in section 3513 of the CARES Act and the Department of Education's ongoing actions to provide economic relief to student loan borrowers whose loans are held by the agency by suspending Federal student loan payments and collections during the pandemic and keeping the interest rate at 0 percent.¹⁵ At the request of the Department of Education by letter dated February 27, 2021, Treasury also has granted an exemption from the bar in 31 U.S.C. 3720B and 31 CFR 285.13, with respect to PPP borrowers with Federal student loans in delinquent status.

The change in PPP regulations relating to Federal student loans and the Treasury exemption apply to new PPP applicants as well as those borrowers who have already received a PPP loan. In this way, PPP borrowers with delinquent or defaulted student loan debts are treated equally, without regard to when they submitted their PPP application. Although PPP applications previously required applicants to disclose whether they had a delinquent Federal debt, student loan borrowers may have been confused about the status of their loans due to the current suspension on the payment and collection of Federal student loans or uncertain about whether loans not directly serviced or held by the Department of Education constitute Federal debt. This confusion may have led some borrowers to make innocent errors on their PPP application. For these reasons, SBA will apply this change to any First Draw PPP Loan or Second Draw PPP Loan, regardless of when the PPP loan was made.

Part IV.(e) of the interim final rule titled "Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans," published on January 14, 2021 ("Second Draw Interim Final Rule") (86 FR 3712), provides that an applicant is not eligible for a Second Draw PPP Loan if the applicant is excluded from eligibility under the consolidated interim final rule implementing updates to the PPP. The following revisions to Part III.B.2.a. of the consolidated interim final rule implementing updates to the

PPP also affect eligibility for Second Draw PPP Loans.

Therefore, subsections B.2.a.iii. and B.2.a.iv of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3698) are revised to read as follows:

2. What businesses, organizations, and individuals are ineligible?

a. Could I be ineligible even if I meet the eligibility requirements in section 1?

You are ineligible for a PPP loan if, for example:

* * * * *

iii. An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years; or

iv. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency (other than a Federal student loan made under Parts B, D, and E of the Higher Education Act of 1965, as amended, or other programs now administered by the U.S. Department of Education, which include the William D. Ford Federal Direct Loan program, the Federal Family Education Loan (FFEL) program, the Federal Perkins Loan program, the Health Education Assistance Loan (HEAL) program, or the Teacher Education Assistance for College and Higher Education (TEACH) program) that is currently delinquent or has defaulted within the last seven years and caused a loss to the government;

* * * * *

Subsection B.2.a. is amended to add after subsection B.2.a.ix:

The exclusion of Federal student loans from the restriction on applicants with delinquent or defaulted Federal debt in subsection (iv) applies to any loan made pursuant to section 7(a)(36) or 7(a)(37) of the Small Business Act, including forgiveness of such a loan, regardless of when the loan was made.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at www.sba.gov. Questions on the

¹² "Federal student loans" mean programs under Parts B, D and E of the Higher Education Act of 1965, as amended, as well as other programs now administered by the Department. These include loans under the William D. Ford Federal Direct Loan program, the Federal Family Education Loan (FFEL) program, the Federal Perkins Loan program, the Health Education Assistance Loan (HEAL) program, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant program if those awards have converted into loans. These delinquencies include loans owed directly to the Department of Education as well as Federal student loans held by institutions of higher education or those guaranteed or insured by the Department of Education and which are held by private lenders or guaranty agencies.

¹³ See 15 U.S.C. 636(a)(36)(P)(iv).

¹⁴ See letter from Department of Education to Department of the Treasury requesting an exemption under 31 CFR 285.13 of the ban on Federal financial assistance to debtors with delinquent Federal student loans, for the PPP program, dated February 27, 2021.

¹⁵ See Department of Education, Coronavirus and Forbearance Info for Students, Borrowers, and Parents, <https://studentaid.gov/announcements-events/coronavirus>.

Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance With Executive Orders 12866, 12988, 13132 and 13563 the Congressional Review Act, the Administrative Procedure Act, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency.

This rule is necessary to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

The Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to § 808(2), SBA for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

The last day to apply for and receive a PPP loan is March 31, 2021. Given the

short duration of this program, and the urgent need to issue loans quickly, SBA, in consultation with Treasury, has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will give small businesses affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive effect but the change to remove the eligibility restriction that prevents businesses with owners who are delinquent on their Federal student loans from obtaining PPP loans is retroactive to March 27, 2020.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collections (OMB Control Numbers 3245–0407 and 3245–0417. The revisions will affect SBA Form 2483, Borrower Application Form Revised February 17, 2021, SBA Form 2483–SD, Second Draw Borrower Application Form Revised February 17, 2021, SBA Form 2484, Lender's Application—Paycheck Protection Program Loan Guaranty Revised January 8, 2021, and SBA Form 2484–SD, Lender's Application—Second Draw Loan Guaranty. SBA Forms 2483 and 2483–SD were amended to implement to the revisions to the criminal history and delinquent student loan restrictions as set forth in this interim final rule. SBA Forms 2484 and 2484–SD were amended to implement the new loan amount calculation option for Schedule C filers, and the revisions to the criminal history and delinquent student

loan restrictions as set forth in this interim final rule.

Additionally, to implement the new loan amount calculation option for Schedule C filers, SBA has developed two new forms, SBA Form 2483–C, PPP Borrower Application Form for Schedule C Filers Using Gross Income, and SBA Form 2483–SD–C, PPP Second Draw Borrower Application Form for Schedule C Filers Using Gross Income, which are required for applicants who are Schedule C filers and choose the gross income loan amount calculation option.

SBA has requested Office of Management and Budget (OMB) emergency approval of the revisions to the information collections to give small businesses affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); 15 U.S.C. 636(a)(37); 15 U.S.C. 636m; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, section 1114 and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116–260), section 303.

Tami Perriello,

Acting Administrator, Small Business Administration.

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